

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 1988 (Act)**

**Chamber Ref: FTS/HPC/EV/22/4229**

**Re: Property at 44/2 Ferry Road Avenue, Edinburgh, EH4 4AS (“the Property”)**

**Parties:**

**Ms Sylwia Pienkowska, Mr Maciej Szarek, 123 Saughton Road North, Edinburgh, EH12 7DU (“the Applicant”)**

**Mr Artur Fojcik, Miss Iwona Pietrzyk, 44/2 Ferry Road Avenue, Edinburgh, EH4 4AS (“the Respondent”)**

**Tribunal Members:**

**Alan Strain (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted.**

This is an application under section 33 of the Act and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (**Regulations**) in respect of the termination of a Short-Assured Tenancy (**SAT**).

The Tribunal had regard to the following documents lodged in advance of the Hearing:

1. Application received 23 November 2022;
2. AT5 and SAT commencing 24 July 2017;
3. Notice to Quit dated 18 July 2022;
4. Section 33 Notice dated 18 July 2022;
5. Certificate of Service of Notices by Sheriff Officers dated 19 July 2022;
6. Written Representations from Respondent’s Representative dated 7 February 2023, 28 March 2023 and 22 June 2023;

7. Written Representations from Applicants dated 1 March 2023, 24 & 26 April 2023, 30 June 2023 and 5 July 2023.

## **Hearing**

The case called for a Hearing by conference call on 5 July 2023. The Applicants participated and represented themselves. The Respondents did not participate and were represented by an advisor from Granton Information Centre.

### *Preliminary Matters*

The Tribunal explained the purpose of the Hearing and the process that was to be followed.

The Tribunal also clarified the issues to be determined. The Respondents no longer contested the rent arrears which were agreed to be £10,880.

The Respondents' representative confirmed that no money had been retained by the Respondents as had been previously indicated to the Tribunal. All income received in respect of the Housing Element of Universal Credit had been spent by the Respondents.

The issues the Tribunal had to determine were:

1. Whether or not a valid SAT was created between the Parties;
2. Whether the Pre-Action Requirements (**PARS**) applied to this case and if they did whether or not they have been complied with;
3. Whether it is reasonable to grant the eviction order sought in all the circumstances of the case.

### *Applicants' position*

The Applicants referred to and adopted the written submissions lodged by their solicitor. AT5s had been given to both Respondents but only that signed by the First Respondent could be found.

PARS did not apply to an application for recovery of possession under section 33.

It was reasonable to grant the order sought due to the significant level of rent arrears and the fact that the Respondents had first stated they had withheld the rent and it would be paid upon completion of repair works, then that only some money had been retained and now that there was no money. The Applicants submitted that the Respondents had no credibility in light of these misrepresentations.

The Applicants have 6 rental Properties which they have purchased over the years as their retirement plan.

### *Respondents' position*

No valid SAT had been created as only one Respondent had been served with an AT5.

PARS applied to a section 33 case and had not been complied with here.

It was not reasonable to grant the eviction order in light of the Respondents health issues (detailed in the written submissions), their young son (7) who suffered from asthma and attended a local school part-time and the fact that they were offering to address the rental arrears situation alongside Universal Credit paying the rent in full each month.

### **Decision and Reasons**

The Tribunal considered the oral and documentary evidence from the Parties. In so far as material the Tribunal made the following findings in fact:

1. The Parties let the subjects under a SAT commencing 24 July 2017;
2. An AT5 had been served on both Respondents prior to commencement of the SAT;
3. Notice to Quit and Section 33 Notice had been served on 19 July 2022;
4. Section 11 Notice had been served on the local authority;
5. The SAT had reached its term and had been terminated;
6. Tacit relocation was no longer operating;
7. No further contractual tenancy was in existence;
8. The Applicants had given the Respondents notice that they required possession;
9. The Respondents were in rent arrears of £10,880 as at the date of the Hearing;
10. The Respondents were in receipt of Universal Credit, the housing element of which covered the monthly rent in its entirety and had been paid to them direct. The Respondents had spent this money and not paid it to the Applicants;
11. The Applicants required to recover possession of the Property due to the substantial rental arrears.

The Tribunal considered all of the evidence and submissions.

The Tribunal were satisfied that a valid SAT had been created. The Tribunal accepted the evidence of the Applicants that AT5s had been served on both Respondents.

The Tribunal did not consider that PARS applied to an application for eviction under section 33.

The Tribunal were aware that it had to be satisfied that it was reasonable in the circumstances to grant the order sought. The Tribunal determined that it would be reasonable to grant the order sought in the circumstances.

The amount of the arrears was considerable and had increased since the CMD (no rent had been paid). The Respondents had spent the housing element of the

benefits received by them and misrepresented the position about withholding rent to the Tribunal.

The Tribunal did not find the Respondents' position credible. The amount offered of £100 per month towards arrears would take 9 years to cover the current arrears.

In all of the circumstances the Tribunal considered the detriment to the Applicants in not having the monthly rent paid and the substantial amount of current arrears outweighed the detriment to the Respondents on having them remove from the Property.

The Tribunal granted the application for eviction and recovery of possession.

The Tribunal explained to the Applicant's solicitor that the **Cost of Living (Tenant Protection)(Scotland) Act 2022** applied and that meant that the Applicant could not take steps to enforce recovery of possession until the expiry of 6 months after the grant of the order or the repeal of the Act (whichever was the sooner).

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

**Alan Strain**

**5 July 2023**

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**Legal Member/Chair**

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**Date**